

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANCISCO MONZON-RIVAS,

Defendant.

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Case No. 8:10CR396

ORDER

This case came before the court on the defendant's Motion to Sever Counts (#25). A hearing was held on December 22, 2010. After consideration of the briefs and the oral argument, the court finds the motion should be granted.

Federal Rule of Criminal Procedure 8(a) permits the government to charge multiple counts in a single indictment provided the offenses charged are (1) of the same or similar character, (2) are based on the same act or transaction, or (3) constitute parts of a common scheme or plan. Joinder is proper if any one of these three standards is met. Rule 8 generally favors joinder "to promote the efficient administration of justice." *United States v. Taken Alive*, 513 F.3d 899, 902 (8th Cir. 2008).

Joint trials on all counts of an indictment are generally preferable for several reasons. First, separate trials necessarily involve a degree of "inconvenience and expense." *United States v. Pherigo*, 327 F.3d 690, 693 (8th Cir.), *cert. denied*, 539 U.S. 969 & 540 U.S. 960 (2003). Second, trying all counts together serves the important function of giving "the jury the best perspective on all of the evidence," thereby increasing the likelihood that the jury will reach "a correct outcome." *Id.*

In this case, Monzon-Rivas argues that the government improperly joined Counts IX and X with the remainder of the counts, because Counts IX and X are not (1) of the same or similar character, (2) are not based on the same act or transaction, nor do they (3) constitute parts of a common scheme or plan. I find the joinder of Counts IX and X to be not properly joined under Rule 8(a).

IT IS ORDERED:

1. The defendant's Motion to Sever Counts (#25) is granted.
2. Count IX, illegal alien in possession of a firearm, and Count X, illegal re-entry, are severed as they were improperly joined under Rule 8 of the Federal Rules of Criminal Procedure. Counts IX and X are not the same or similar in character, nor were they based on the same act or transaction.
3. The Clerk shall amend the records of the court to show the severance of Counts IX and X from the pending counts of the Indictment of October 19, 2010.
4. A party may object to a magistrate judge's order by filing an "Objection to Magistrate Judge's Order" within 14 days after being served with the order. The objecting party must comply with all requirements of NECrimR 59.2.

Dated this 22nd day of December 2010.

BY THE COURT:

S/ F.A. Gossett, III
United States Magistrate Judge